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2 UNITED STATES DISTRICT COURT  
3 NORTHERN DISTRICT OF CALIFORNIA  
4 SAN FRANCISCO DIVISION

5 Philip Wong, Frederic Chaussy, and  
6 Leslie Marie Shearn, individually,  
7 on behalf of all others similarly  
situated, and on behalf of the  
general public,

8 Plaintiffs,

9 -against-

10 HSBC Mortgage Corporation (USA);  
11 HSBC Bank USA, N.A.; and  
12 DOES 1 through 50,  
inclusive,

13 Defendants.

Index No.  
C 07 2446  
MMC (ECF)

14  
15 VIDEOTAPED DEPOSITION of LESLIE MARIE SHEARN,  
16 taken by Defendants, held at the offices of Littler  
17 Mendelson, 885 Third Avenue, New York, New York  
18 10022-4834, on Wednesday, September 3, 2008,  
19 commencing at 9:18 a.m., before Jean Wilm, a  
20 Registered Professional Reporter, Certified LiveNote  
21 Reporter and Notary Public within and for the State of  
22 New York.

Shearn

numbers that add up to more than ten, but if you can answer again as to the number that you remember about this meeting you remember very little about of people who were in attendance, you can proceed.

A I don't know how many were there.

BY MR. TICHY:

Q Okay. Did you receive any training when you became a loan officer?

A Yes.

Q Where did you receive the training?

A In Buffalo.

Q Were you given a job description?

A Possibly. I don't really remember.

Q During the time that you were a loan officer, how were you paid? Were you salaried?

A Well, according to -- yeah, according to Gil, I was hourly.

Q Gil, Gil told you you were hourly as a loan officer?

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2 A As per Gil, yes.

3 Q Yes. What did he say that your  
4 hourly rate was?

5 A I don't remember. It was not  
6 going to change, that's all I know. I wasn't  
7 going to make any more or any less money than I  
8 was already making.

9 Q Is that true during the entire  
10 time that you were a loan officer?

11 A That things were not going to  
12 change?

13 Q No, no, no. Excuse me. Is that  
14 true that your -- let me back up.

15 Did your rate of pay change at any  
16 time during the period that you were a loan  
17 officer?

18 A Yes.

19 Q When did it change?

20 A Possibly after six months.

21 Q How did it change?

22 A It lessened.

23 Q Okay. How did it lessen?

24 A How did it lessen?

25 Q Yes. Were you given any sort of

1 Shearn

2 compensation or incentives?

3 A I received less base pay and  
4 whatever commissions came in.

5 Q Okay. Were you commissioned for  
6 six months?

7 A Actually, for the first six  
8 months, you received your base pay, and if  
9 anything closed within that time, you actually  
10 received both.

11 Q During the first six months that  
12 you were a loan officer, did you receive any  
13 commission?

14 A Yes.

15 Q After the first six months, did  
16 you receive any commissions?

17 A I believe I may have received one  
18 commission that I didn't really receive because  
19 at that point I was on draw. So I closed the  
20 loans, but I was overdrawn and, therefore, I did  
21 not receive the commission. The commission went  
22 back to the company for the moneys that they had  
23 paid me.

24 Q Okay. When were you put on draw?

25 A When was I what?

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Q Placed on draw.

A Probably approximately six months  
after becoming a loan officer.

Q So when you say that your base was  
decreased after six months, what you're saying  
is that you converted from salary to draw, plus  
commission; is that correct?

A Well, yes and no. I received the  
base salary and then a commission, so yes.

Q When did the base salary become a  
draw?

A Probably after six months.

Q Okay. Was there any time that the  
base salary or draw was forfeited?

A What do you mean by "forfeited"?

Q Well, okay. Let me ask the  
question a little bit differently.

Do you recall what the amount of  
the base salary was after six months?

A No, I do not.

Q Do you recall the amount of  
decrease in your base salary after six months?

A No, I do not.

Q Did you receive that base salary

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2 A We were given leads from the HSBC  
3 Bank, which was located downstairs from HSBC  
4 Mortgage, as well as the HSBC Commercial.

5 Q Did you actually spend time at a  
6 desk in HSBC branch at any point?

7 A If they required that we were to  
8 meet a customer there, yes.

9 Q And how frequently was that?

10 A As for myself, I only went down a  
11 couple of times and took applications.

12 Q So you only spent a couple of  
13 times at an HSBC branch?

14 A Yes.

15 Q Do you recall for how many hours?

16 A Maybe a total of six hours,  
17 dependent upon what it was that the customer --  
18 if the customer wanted an actual application,  
19 which I had done two of, then we would go  
20 through the entire application process, which  
21 could take two and a half, three hours,  
22 dependent upon what the customer wanted.

23 If it was just an idea or getting  
24 a feel for whether or not they wanted a mortgage  
25 or what they were interested in or consulting,

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2 it could take up to an hour and a half.

3 Q Okay. And that occurred a couple  
4 of times?

5 A Yes, a couple of times.

6 Q During the entire time that you  
7 were employed as a retail mortgage consultant;  
8 is that right?

9 A Yes.

10 Q You said that you conducted  
11 seminars in New Jersey?

12 A In New York. You asked me if I  
13 conducted seminars in New York.

14 Q Well, did you conduct seminars in  
15 New Jersey?

16 A No. I just met with realtors in  
17 New Jersey.

18 Q How frequently did you meet with  
19 realtors in New Jersey?

20 A Not often. I had one realtor  
21 contact in particular that I would meet with,  
22 and that was about that.

23 Q Well, how many hours per week were  
24 you spending with realtors in New Jersey?

25 A Maybe about an hour.

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A I worked the two Raritan trade shows.

Q Okay. Did you work with realtors in New Jersey?

A One.

Q "One." And did you do that during that time period that you were assigned to work in the loan production office two days per week?

A That would be the only time that I would have correspondence or communications with her.

Q So did you work more than 16 hours per week during that time period that you were assigned to the loan production office two days per week in the state of New Jersey?

A In the state of New Jersey, especially when they assigned me to two days a week, I came in at 8 and I left at 5, it was taking away from my business in New York.

Q During this -- so your answer is, and it's just to get it clarified on the record, during the time that you were assigned to the loan production office two days per week in New Jersey, you only worked 16 hours per week in the



1 Shearn

2 state of New Jersey; am I correct?

3 A At that particular time, yes.

4 Q And approximately how many hours  
5 per week did you work in the state of New York  
6 at that time?

7 A When I left New Jersey, I would  
8 generally get to my home somewhere between 7 and  
9 7:30 at night, and then I would meet with other  
10 realtors, I would meet with my customers, I  
11 would catch up with all of my New York  
12 customers.

13 Q Did you work less than 40 hours  
14 per week during the time period that you were --  
15 well, let me back up.

16 Did you work less than 40 hours  
17 per week in the state of New York during the  
18 time period that you were assigned to work two  
19 days per week in the loan production office in  
20 New Jersey?

21 A Less than 40 hours a week -- I  
22 would work the eight-hour shift at the loan  
23 production office and then go home and put in at  
24 least, at the very least, five additional hours.  
25 Taking away my traveling time, that will give me

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14 hours that I put in.

So I would say if you take my 14  
hours, double it up for two days, that's 28  
hours, and then you put the other days in,  
including Saturday, I'd say -- I think it's safe  
to say that I worked over 40 hours a week, even  
on the days that I worked in that loan  
production office.

Q Okay. Now, my question was only  
about the state of New York.

A I'm talking about the &&State of  
New York.

Q So during the period that you were  
assigned to work two days per week in the state  
of New Jersey, you worked every day in the state  
of New York, is that what you are saying?

A Yes, that's what you had to do.

Q But as you sit here today, you  
don't know how many hours you worked; is that  
right?

MR. SCHWARTZ: Objection. She  
just testified extensively about how  
many hours she worked.

Q Actual hours.

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2 MR. SCHWARTZ: She just  
3 testified about actual hours.

4 Q Excuse me.

5 Do you know what the actual hours  
6 were that you were working in the state of New  
7 York during the time that you were assigned to  
8 the loan production office in New Jersey to work  
9 two days per week?

10 MR. SCHWARTZ: Objection.

11 Asked and answered many times.

12 You can answer it one more  
13 time and then we're going to go to  
14 lunch.

15 A I worked over 40 hours a week  
16 during the time that I worked for the state of  
17 New Jersey at the LPO.

18 Now, what I can do is basically  
19 give you a calculator, or get me a calculator,  
20 and I will try to figure out how many  
21 approximate hours a week it was, but it was over  
22 40 hours because with each trip that I had to  
23 make to the LPO in New Jersey, which was a  
24 nonproductive thing for me to do, I had to catch  
25 up for everything that I lost time on in

1 Shearn

2 New York.

3 MR. TICHY: Okay. We're going  
4 to break for lunch, and then we will  
5 come back here. It's 12:15. Let's try  
6 to start roughly about 1:15.

7 VIDEOGRAPHER: Time is now  
8 12:15 p.m. Off the record.

9 (Whereupon, a luncheon  
10 recess was taken.)

11 (Document Bates-stamped  
12 MORT001263 through 1269 was marked  
13 as Deposition Exhibit 10 for  
14 identification, as of this date.)

15 (Document Bates-stamped  
16 MORT001270 through 1276 was marked  
17 as Deposition Exhibit 11 for  
18 identification, as of this date.)

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2 A I, I'm still not sure by what you  
3 mean by "performed." I don't understand  
4 performed in what way.

5 Q Okay. Let me ask the question a  
6 little differently for you.

7 A Okay.

8 Q Did you ever see other loan  
9 officers perform their jobs?

10 A Yes, I have.

11 Q During the time that you were a  
12 loan officer, did you see other loan officers  
13 perform their jobs?

14 A During the time that I was a loan  
15 officer, no.

16 Q So during the time that you were a  
17 loan officer, do you have any knowledge, actual  
18 knowledge as to how other loan officers were  
19 doing their work?

20 A During the time that I was a loan  
21 officer, I cannot specifically say that I have  
22 actual knowledge as to how they were doing their  
23 jobs other than what they were saying and  
24 whatever assumptions that I made that -- how I  
25 knew they worked as a loan production assistant.

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2 Q Earlier you told us that you  
3 attended a meeting of other loan officers which  
4 you believed there were people in attendance  
5 from Hoboken, Parsippany, and Toms River.

6 Do you recall that testimony?

7 A Yes, I do.

8 Q At the time of that meeting, did  
9 you know how any of those other loan officers  
10 performed their jobs?

11 A I, I'm still not sure by what you  
12 mean by "performed." How they do their jobs?

13 Q Correct.

14 A How they --

15 Q Let me ask it this way. If you  
16 are having difficulty in understanding the word  
17 "performed," let me put it to you this way.

18 MR. SCHWARTZ: The way you're  
19 using it.

20 Q At the time you attended this  
21 meeting with other loan officers, the other loan  
22 officers being from Parsippany, Toms River, and  
23 from Hoboken, did you at that time or subsequent  
24 to that time have actual knowledge as to how  
25 those loan officers were doing their work?

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2 MR. SCHWARTZ: Objection.

3 Vague as to actual knowledge.

4 You can answer if you  
5 understand. It sounds like he is  
6 asking the same question he asked  
7 before.

8 A I am afraid that what I'm not  
9 understanding is the depth that you are asking  
10 me of my knowledge of how they do their work.

11 I mean, I can only tell you on a  
12 very peripheral level and what I have observed  
13 in the past as a production loan assistant how  
14 these employees did their job.

15 Q So your answer, then, is you  
16 really didn't know at that time how the  
17 individuals were actually doing their job; is  
18 that right?

19 A No, I do not know how they were  
20 doing their job.

21 Q Fair enough.

22 Let me show you another document.  
23 This one is marked Exhibit Number 10.

24 Do you recognize that document?

25 A I recognize it as a document that

1 Shearn

2 And the underwriters because they were doing the  
3 paperwork.

4 Q Okay. Now, you testified that  
5 there were deductions for loan application fees.

6 I didn't really understand what  
7 you were saying, so could you explain to me what  
8 you were telling us here about some deductions?

9 A If I waived a loan application  
10 fee, well, you know, the company wasn't going to  
11 lose out. The loan officer did. So if you  
12 waived a fee, it came out of your commission.

13 Q Now, during the time that you  
14 worked as a loan officer, you had a guaranteed  
15 salary for six months; am I right?

16 A Yes.

17 Q Okay. Was any money ever taken  
18 out of that guaranteed salary for loan  
19 application fees?

20 A It came out of the commission.

21 Q Okay. So in other words, you  
22 earned less commission if there was a waived  
23 loan application fee that didn't fund; is that  
24 right?

25 A Yes, actually there was one that



1 Shearn

2 that happened with, yes.

3 Q Okay. So it was only one time?

4 A Now that I can recall.

5 Q But as far as the salary was  
6 concerned, you got every penny of that that you  
7 were told that you were going to get, right?

8 A As far as I'm aware of, yeah.

9 Q And then after six months, you  
10 were given a salary or draw?

11 A Yes, there was a draw.

12 Q Okay. Was any money ever taken  
13 out of that salary or draw?

14 A What do you mean by, was it taken  
15 out of?

16 Q Okay. You're right. I need to be  
17 more specific.

18 Was there any money taken out of  
19 that salary or draw after the first six months  
20 when you were on the salary or draw for loan  
21 application fees?

22 A If there was a commission given on  
23 that month, then whatever I waived or flexed, it  
24 came out of your commission.

25 Q You're going to have to listen to

## C E R T I F I C A T E

STATE OF NEW YORK )

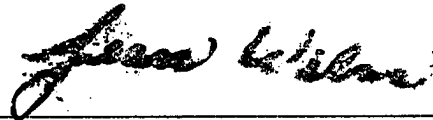
) ss.

COUNTY OF NEW YORK )

I, Jean Wilm, a Shorthand  
(Stenotype) Reporter and Notary Public  
of the State of New York, do hereby  
certify that the foregoing Deposition,  
of the witness, LESLIE MARIE SHEARN,  
taken at the time and place aforesaid,  
is a true and correct transcription of  
said deposition.

I further certify that I am  
neither counsel for nor related to any  
party to said action, nor in any wise  
interested in the result or outcome  
thereof.

IN WITNESS WHEREOF, I have  
hereunto set my hand this 12th day of  
September, 2008.



JEAN WILM, RPR, CMRS, CLR